



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 3, 2005

Mr. David Weaver
General Counsel
Texas State Securities Board
208 East 10th Street, 5th Floor
Austin, Texas 78701-2407

OR2005-01003

Dear Mr. Weaver:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 218031.

The Texas State Securities Board (the "board") received a request for all board records relating to seven named entities and/or individuals, as well as all documents relating to the Universal Lease timeshare agreement. You state that you have provided the requestor with a portion of the requested information. You claim, however, that the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

You indicate, and the documents reflect, that the present request concerns information obtained by the board in connection with investigations to prevent or detect violations of the Texas Securities Act or a board rule or order. You seek to withhold the submitted information under section 552.101 in conjunction with article 581-28 of the Texas Securities

¹ We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Act. We note that this type of information is the subject of a previous determination issued to the board under section 552.301 of the Government Code. *See* Gov't Code § 552.301(a). In Open Records Letter No. 2004-0239, issued January 12, 2004, we granted the board a previous determination finding that information obtained by the board in connection with an investigation to prevent or detect a violation of the Texas Securities Act or a board rule or order is excepted from disclosure under section 552.101 in conjunction with article 581-28 of the Texas Securities Act. That previous determination authorizes the board to withhold such information without the necessity of requesting a decision from the attorney general, provided the pertinent facts and circumstances have not changed since the issuance of the prior ruling. In this case, you state that the submitted information was obtained in connection with an investigation to prevent or detect a violation of the Texas Securities Act or board rule or order, and you do not inform us of any change in the law, facts, and circumstances on which the prior ruling is based. We therefore conclude that the board must withhold the submitted information pursuant to section 552.101 of the Government Code in accordance with the previous determination issued in Open Records Letter No. 2004-0239. *See also* Open Records Decision No. 673 at 7-8 (2001) (listing elements of second type of previous determination under Gov't Code § 552.301(a)).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free,


at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Lauren E. Kleine
Assistant Attorney General
Open Records Division

LEK/jev

Ref: ID# 218031

Enc. Submitted documents

c: Mr. Jeffrey D. Gardner
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(w/o enclosures)